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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 359/2018 & CM APPL. 11642/2018

PRINCIPAL COMMISSIONER OF INCOME TAX-7
..... Appellant

Through: Mr. Sanjay Kumar with Mr. Rahul Chaudhary, Standing Counsels for Revenue.

versus

ROYAL FINVEST PVT. LTD. ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **23.03.2018**

The Revenue's appeal is directed against the deletion of amounts brought to tax under Section 68 of the Income Tax Act, 1961 (hereafter referred to as "the Act") which the assessee claimed were share application receipts. The AO was of the opinion that the material produced by the assessee to establish that the transactions were genuine and also prove the identity of the applicants was inadequate; he relied upon the unsatisfactory response to notices issued under Section 133(6) of the Act to the third parties. The CIT(A) re-appreciated the evidence and was of the opinion that the assessee had discharged the burden; he therefore directed the deletion of the amounts (₹85,00,000/-).

The ITAT affirmed the opinion of the CIT(A). The Revenue urges that the assessee had not produced the relevant documents, in the first instance, to establish the genuineness of the transaction relating to the amount deposited by 10 share investors. The ITAT in its impugned order has discussed this aspect in the following terms:

> *"7. We have heard the Ld. Sr. DR and have also perused the records. We* find *from the order of the Ld. CIT(A) that Ld. CIT(A) has given a finding that the share application money was received through demand draft and the relevant details regarding the same were furnished during the course of assessment proceedings. Ld. CIT(A) has also noted that the assessee had filed the PAN Nos. of the share applicants along with the copy of ITRs, audited balance sheets, Memorandum and Articles of Association and also a copy of the applicant companies muster. He has also noted that the assessee had produced copies of share certificates issued to the investor companies as well as copies of Form no. 2 filed with the Registrar of Companies. Ld. CIT(A) noted that the Managing Directors and the bank statements of the investor companies could not be produced by the assessee. Thereafter, the Ld. CIT(A) has adjudicated the issue in para 6 of the impugned order*
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> *xxxx xxxx xxxx xxxx*
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> *xxxx xxxx xxxx xxxx*
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> *8. A perusal of the above reveals that the Ld. CIT(A) has accepted the assessee as having discharged the initial onus after due consideration of the facts as well*

as the established judicial precedents. The Ld. CIT(A) has followed the ratio of the judgment of the Hon'ble Apex Court in CIT vs Lovely Exports Pvt. Ltd. reported in 216 CTR 195 which we find has been correctly relied upon. We agree with the adjudication of the Ld. CIT(A) that once the initial onus cast upon by the assessee regarding the genuineness, creditworthiness and identity has been discharged by the assessee, the onus shifts to the department to disprove the claim of the assessee by cogent evidence to the contrary. Therefore, we find no reason to interfere with the findings of the Ld. CIT(A) and respectfully following the ratio of the Ld. Apex Court in the case of CIT vs Lovely Exports (supra), we uphold the orders of the Ld. CIT(A) and dismiss the grounds raised by the department."

This Court is of the opinion that both the findings and reasoning of the lower appellate authority are purely factual. No substantial question of law arises. The appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MARCH 23, 2018
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